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November 13, 2000

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SUBJECT: Submittal of Statement of Dispute to Dispute Resolution Committee regarding
SFE-20 Tank, WAG 3, INEEL (EM-ER-216-00)

References:

- 1) August 10, 2000 Letter from B. R. Monson to D. N. Rasch, *Characterization Work Plan for the VES-SFE-20 Hot Waste Tank at the Idaho National Engineering and Environmental Laboratory*
- 2) September 26, 2000 Letter from B. R. Monson to D. L. Wessman, *Closure of VES-SFE-20 Hot Waste Tank System and the Intermediate Level Transuranic Storage Facility (ILTSF) on the Idaho National Engineering and Environmental Laboratory*
- 3) October 19, 2000 Letter from D. N. Rasch to B. R. Monson, *Response to your September 26, 2000 letter—Closure of VES-SFE-20 Hot Waste Tank at the Idaho National Engineering and Environmental Laboratory (attached)*
- 4) October 30, 2000 Letter from B. R. Monson to D. N. Rasch, *Response to October 19, 2000 Letter Requesting Reconsideration of Department Determination of HWMA Applicability for VES-SFE-20 Hot Waste Tank at the Idaho National Engineering and Environmental Laboratory (attached)*

To the Dispute Resolution Committee:

In accordance with Section 9.2(a) and (d) of the INEEL Federal Facility Agreement and Consent Order (FFA/CO), this letter is a written statement of dispute arising from the October 30, 2000 letter from Mr. Brian Monson, DEQ, to Don Rasch, DOE-ID (Reference (4)). That letter requests submittal by DOE-ID to DEQ of a closure plan for the VES-SFE-20 tank at the INTEC facility at INEEL.

Informal discussions related to this issue were initiated by the August 10, 2000 letter from Brian Monson (Reference (1)). The matter was discussed by representatives of INEEL with Dean Nygard and Brian Monson on August 29, 2000, and at the quarterly meeting with DEQ held on September 12, 2000. Mr. Monson then sent his September 26 letter (Reference (2)). The letter from Don Rasch to Mr. Monson setting out INEEL's position in detail was sent October 19 (Reference (3)). Mr. Monson stated his refusal to further consider INEEL's position in his October 30 letter (Reference (4)). The attached information was provided to DEQ during these exchanges.

Reference (4) was written in response to a detailed letter from DOE-ID (Reference (3)) asserting that the SFE-20 tank was not properly the subject of closure under the Hazardous Waste Management Act/Resource Conservation and Recovery Act (HWMA/RCRA) because it had been closed and abandoned in 1976, prior to the effective date of the RCRA regulations (November, 1980) (see attached records). Therefore there was no management of hazardous waste in this tank that would make it subject to regulation under HWMA/RCRA. Because several EPA policy guidance letters have reaffirmed this understanding of the RCRA regulations (which are incorporated by reference in the Idaho regulations), this tank is not subject to the regulatory requirement.

Further, in agreements and correspondence since 1985 (see excerpts of the COCA, attached), the Department of Environmental Quality (DEQ) has consistently classified this tank as a site in need of remediation, rather than as an active Treatment, Storage or Disposal (TSD) Unit that would be subject to regulations requiring permitting and the filing of a closure plan. DEQ has never requested the filing of a Part A or Part B permit application for this tank, or sought to include it in the RCRA permit for INEEL (excerpts attached). Rather, it has repeatedly participated in managing the remediation of this tank under the procedures of the INEEL FFA/CO, which was signed by the Parties in 1991. Specifically, DEQ has participated in the selection of the current Record of Decision for Operable Unit 3-13 (excerpts attached), which directs that this tank be remediated in accordance with procedures prescribed in the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and the National Contingency Plan (40 CFR Part 300). As the tank is officially listed as a CERCLA site within operable unit 3-09 and described as an "Abandoned Liquid Radioactive Waste Storage Tank" in Appendix A (p. A-13) of the FFA/CO, the SFE 20 tank and its disposition are properly and solely governed by the FFA/CO, including the dispute resolution provisions in Article IX of the FFA/CO.

Because the FFA/CO constitutes a Consent Order between DOE-ID and DEQ under Idaho Code Section 39-4413, any civil enforcement action outside the process embodied in the Consent Order for issues within its scope (39-4413(d)) is precluded. Since the disposition of the

SFE 20 tank is clearly within the scope of the FFA/CO, all enforcement activities by DEQ related to this issue must be confined to the provisions outlined in the FFA/CO.

Since the cleanup of the SFE-20 tank is a remedial action under authority of CERCLA Section 104, as delegated to the Department of Energy by Executive Order 12580, in accordance with Section 121 of CERCLA, it is subject to substantive Applicable or Relevant and Appropriate Requirements (ARARs) of HWMA/RCRA and other laws, but is not subject to permitting and other procedural requirements of such laws. In the FFA/CO, DEQ and the other "Parties recognize that under Section 121(e)(1) of CERCLA, 42 U.S.C. 9621(e)(1), response actions called for by this Agreement and conducted entirely on the INEEL Site are exempted from the procedural requirement to obtain federal, state, or local permits. . . ." (Paragraph 7.7) The substantive requirements related to closure of hazardous waste disposals under state laws and regulations are being applied to this tank through the CERCLA process, but the filing of a closure plan with DEQ is a procedural requirement which is obviated by the procedure prescribed by the National Contingency Plan and the FFA/CO.

As the State has specifically agreed in the FFA/CO to enforce permit requirements only after resolution of disputes, attached to this Notice of Dispute are documents supporting the above-stated reasons for this dispute and describing the work affected by this dispute.

Inasmuch as Paragraph 9.2(e) of the FFA/CO prescribes that the Dispute Resolution Committee render a decision within 21 calendar days of receipt of the Statement of Dispute, I suggest a meeting in Boise, ID, on Tuesday, November 28, 2000.

If you need further information on this matter, you can contact me at (208)526-4392, by FAX at (208)526-0598, and via e-mail at hainke@id.doe.gov.

Sincerely,



Kathleen E. Hain, Director
Environmental Restoration Program
US Department of Energy
Idaho Operations Office

cc: Lisa Green
Roger Corman
Brett Bowhan
Don Rasch
Jeff Hoyles
Dave Wessman

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ID DISTRIBUTION:

K. Hain (EM/ER), MS 1117, w/enc.
T. Jenkins (EM/ER), MS 1117, w/enc.

CONCURRENCE:

(y)	EM	_____
(w)	OCC	_____ <i>[Signature]</i>
	TS	_____ <i>[Signature]</i>

RECORD NOTES:

This letter was prepared to send a Statement of Dispute to the State of Idaho and EPA concerning the need for a closure plan for the SFE-20 Hot Waste Tank System.

1. This letter was prepared based on discussions between R. Swensen (BBWI), T. Jenkins^{twj 11/13/00} and K. Hain (EM/ER).
3. This letter/memo closes OATS number N/A.
4. The attached correspondence has no relation to the Naval Nuclear Propulsion Program. Naval Reactors concurrence is not required.

TWJenkins (EM/ER): File: SFE-20 Statement of Dispute.doc